

ESTATE OF LAWRENCE ECOFFEY

IBIA 76-11

Decided April 16, 1976

Appeal from an Administrative Law Judge's order denying petition for rehearing.

Affirmed.

1. Indian Probate: Claim Against Estate: Proof of Claim

An unsecured creditor is hard-pressed to overcome objections to his claim if he fails to appear at the probate hearing. This possibility is conveyed to general creditors in the notice of hearing.

2. Indian Probate: Claim Against Estate: Limitation on Actions

It was within the authority of the Administrative Law Judge to disallow appellant's claim where the evidence shows that a similar claim would be barred under state law as untimely.

3. Indian Probate: Claim Against Estate: Secured Claim: Generally

If the tribal credit board is correct in its assertion that its claim is secured by a valid Assignment of Trust Income and Power to Lease, legal steps may be taken outside the probate of decedent's estate to seek redress.

Appearances: Harry Jumping Bull, Chairman, Oglala Sioux Tribal Credit Board, for appellant; Marvin Amiotte for appellee heirs at law.

OPINION BY BOARD MEMBER HORTON

The Oglala Sioux Tribal Credit Board appeals an order denying a petition for rehearing on grounds that the Administrative Law Judge improperly disallowed the credit board's claim against decedent's estate.

The original hearing in the probate of this estate took place on June 25, 1974, following written notice to interested parties issued May 28, 1974. No one representing the tribal credit board attended the June 25, 1974, hearing and it is not denied that members of the credit board received notice of the probate proceeding.

In his July 8, 1975, Order Denying Petition for Rehearing, Administrative Law Judge Garry V. Fisher held that because the credit board's claim was objected to by decedent's heirs, it was incumbent on the creditor to be present at the hearing to prove the claim. This is a long-standing rule in the Secretary's disposition of claims. Estate of William Fills the Pipe, IA-1436 (June 28, 1966).

The tribal credit board maintained in its petition for rehearing and submits in this appeal that the claim at issue is a secured claim against decedent's estate and, accordingly, that it was sufficient to merely furnish the probate judge in advance of the hearing with the necessary documents which substantiate the claim. Specifically, the tribal credit board contends that the decedent failed to satisfy a loan initiated February 2, 1960, which is allegedly secured by way of an Assignment of Trust Property and Power to Lease approved by the BIA Superintendent. According to appellant, the original amount of the outstanding loan was \$6,000 which was to have been repaid in full on January 1, 1961. New promissory notes were allegedly executed after the expiration of the original repayment date, the last such note bearing the date December 1, 1964, for the principal amount of \$1,068.86.

In his March 4, 1975, Order Determining Heirs the Administrative Law Judge concluded that the promissory note of December 1, 1964, constituted an unsecured claim and that the creditor had failed to prove the present validity of the claim. In disallowing the claim, the judge also noted that the affidavit in support of the claim contained the false statement that there were no offsets against the alleged indebtedness. The July 8, 1975, Order Denying Petition for Rehearing repeats the finding that the credit board's December 1, 1964, promissory note constitutes an unproved, unsecured claim and that the evidence fails to establish that the note was secured by the 1960 Assignment of Trust Property and Power to Lease. In addition, Judge Fisher held in denying a rehearing that the credit board's claim had

been in default for over 6 years and was therefore barred by the South Dakota Statute of Limitations.

[1] Regardless of whether appellant's claim is for a secured or unsecured indebtedness, this Board cannot grant the creditor's requested relief. First, as previously noted, an unsecured creditor is hard-pressed to overcome objections to his claim if he fails to appear at the probate hearing. William Fills the Pipe, supra. This possibility was conveyed to the appellant in the Notice of Hearing issued May 28, 1974, in which it is clearly stated that "failure to appear may result in the loss of rights claimed." Based on the evidence which was before the Administrative Law Judge, it does not appear that legal error was committed in finding that appellant's claim was unproven.

[2] Secondly, we find that it was within the authority of the Administrative Law Judge to disallow appellant's claim where the evidence shows that a similar claim would be barred under state law as untimely. Department regulations provide at 43 CFR 4.250(e):

A claim, whether that of an Indian or non-Indian, based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

See, Estate of Charging Woman or Mrs. James Dismounts Thricea, Mrs. John Parted Hair or Yellow Fox Woman, L.B. # 197 (12071-35).

[3] Finally, if the credit board is correct in the assertion that its claim is secured by a valid Assignment of Trust Income and Power to Lease, legal steps may be taken by the appellant outside the probate of decedent's estate to seek redress. In a 1958 Solicitor's Memorandum, with which we agree, it was stated, "A properly secured creditor need not present a claim since he may be paid by means of foreclosure or other methods prescribed in the lending agreement." Acting Solicitor's Memorandum (Indian Affairs) to Examiner Montgomery, A-58-1104.9a (April 14, 1958). Our Board has previously held that an Assignment of Trust Income and Power to Lease agreement represents a secured claim. Estate of Martin Spotted Horse, Sr., 2 IBIA 265, 81 I.D. 227 (1974). It is further noted that the purported Assignment of Trust Income and Power to Lease instrument presented by appellant in this case was co-signed by decedent's surviving spouse. Since she is still living, the credit board's contractual rights, if any, pursuant to the foregoing alleged agreement might be reconciled by appellant through her.

NOW, THEREFORE, by Virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the July 9, 1975, Order Denying Petition for Rehearing issued by Administrative Law Judge Garry V. Fisher is hereby AFFIRMED and the appeal of the Oglala Sioux Tribal Credit Board dated August 13, 1975, is hereby DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

Wm. Philip Horton
Member

I concur:

Alexander H. Wilson
Administrative Judge